

of said committees an updated report  
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l statement of the actual balance then  
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roved, with emergency preamble, Aug 7, 1990.

luted "commissioner" for "director", in each  
ommissioner's" for "director's", in two places,  
rust Fund" for "unemployment trust fund", in  
n Insurance Trust Fund" for "unemployment

"An Act relative to restoring solvency to the  
as approved, with emergency preamble, July 14,

required to be provided in section fourteen F  
the General Laws, the commissioner of the  
ill include in each quarterly report a five year  
private contributory system which indicates for  
benefit payments, trust fund balance, total  
ment as of September thirtieth of the calendar  
through the surcharge imposed under section  
ty-one A on an accrued basis, and the aggregate  
luction that will be applicable in the calendar  
economic assumptions on which the projections  
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icable schedule which shall include the solvency  
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of the department of employment and training  
a recommendation regarding the amount of  
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er thirty-first, nineteen hundred and ninety-five  
applicable, that the total contributions for the  
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vent the same.

Insurance Contribution; Medical  
Excluded; Deductions Allowed;  
Review Board; Penalties; Hearing  
Health Insurance Coverage.

employers who employ five or fewer  
of section fourteen, fourteen A, or  
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employers who employ five or fewer  
of section fourteen, fourteen A, or  
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itions, see Midyear Pamphlet.

a medical security contribution for each employee computed by  
multiplying the wages paid each employee by twelve per cent. For the  
purposes of this section, "employee" shall not include the following  
employees of any employer: (i) any employee who has been employed by  
such employer for fewer than ninety days from date of hire, (ii) any  
employee who normally works for fewer than thirty hours per week;  
provided, however, that any head of household who has dependent  
children living at home and is working at least twenty hours per week or  
any employee having worked at least five hundred and twenty hours in the  
prior six months shall be considered to be an employee for the purposes  
of this section; (iii) any employee who is hired to perform a service for a  
period of less than five months; (iv) any seasonal agricultural employee,  
who for the purposes of this section shall be defined as an individual who  
is employed in agricultural employment of a seasonal or other temporary  
nature; and (v) any employee who is covered by a group or nongroup  
health benefit plan which is financed without any participation by the  
employer, who is enrolled in the medicare program, or who is covered by  
a government operated medical assistance program; and provided, further,  
that any employee covered by a health insurance plan established pursuant  
to section nine of chapter one hundred and eighteen F shall be considered  
to be an employee for the purposes of this section. Each employee as  
defined in section one shall be presumed to be an employee as included  
in this section unless the employer certifies to the commissioner, in such  
form and manner as the commissioner may require, that such employee  
should not be included under the provisions of this section. Each employer  
may require any employee to verify his health insurance status pursuant to  
such rules and regulations as the director shall promulgate. No employer  
may require an applicant for employment to disclose his health insurance  
status or that of his spouse, dependents, or other family members. In no  
case may an employer discriminate against such applicant on the basis of  
said applicant's health insurance status. Any person aggrieved by a  
violation of the preceding two sentences may institute within three years  
of such violation a civil action for injunctive relief and any damages thereby  
incurred. Any employer found to be in violation pursuant to the action of  
the aggrieved person shall reimburse such reasonable attorney fees and  
court costs incurred in the protection of rights granted as shall be  
determined by the court.

(c) An employer may deduct from the amount owed for each employee  
under subsection (b) its average expenses per employee for providing  
health insurance coverage or other health care benefits for its employees,  
allowable for the current quarter by the Internal Revenue Service as a  
deductible business expense; provided, however, that any nonincorporated  
employer may deduct from the amount owed for each employee under  
subsection (b) its average expenses per employee for providing health  
insurance coverage or other health care benefits for its employees as  
reported and allowed pursuant to rules and regulations promulgated by  
the commissioner; and provided, further, that such deduction for any  
employer shall not reduce the contribution for any employee below zero.

(d) Such unemployment health insurance contribution and such medical

security contribution shall be paid to the commissioner in accordance with the procedures prescribed by the commissioner. The receipts from such contributions shall not be deposited in the state Unemployment Compensation Fund, but shall be impressed with a trust and dedicated, through the state treasurer as trustee, to the Medical Security Trust Fund established in chapter one hundred and eighteen F. Prior to the depositing of the receipts, the commissioner may deduct all administrative costs incurred as a result of this section, including an amount as determined by the United States secretary of labor in accordance with federal cost rules, but in no calendar year may such deduction exceed five per cent of the amounts collected pursuant to this section.

[No change through subsection (g).]

(h) There shall be a rate review board composed of the secretary for administration and finance or his designee, the secretary of human services or his designee, and the secretary of economic affairs or his designee. Said board shall determine the rate of health insurance inflation for the previous year to be applied to the medical security wage base for the subsequent calendar year and shall certify said rate to the commissioner on or before November thirtieth of the year preceding the year to which the medical security wage base is to be applied. This inflation rate shall be the average percentage increase in premiums for accident and sickness insurance policies issued in the commonwealth during the then current calendar year over premiums for accident and sickness insurance policies issued in the commonwealth during the then previous calendar year.

[No change in the second paragraph of subsection (h).]

(i) Any employer who fails to file any report or form as required by this section shall pay a penalty equal to ten percent of the contribution due under this section; provided, however, that the penalty assessed shall not exceed one hundred dollars nor be less than twenty-five dollars for each such failure to file, in addition to restitution for any amounts owed to the Medical Security Trust Fund as a result of such failure to make a correct contribution.

Any penalties collected pursuant to this section shall be deposited in the health insurance hardship trust fund established by chapter one hundred and eighteen F.

Any employer, in accordance with rules and regulations promulgated by the commissioner, who relies in good faith on statements by employees relative to their health insurance status shall not be liable for any penalty or restitution for failure to comply with the provisions of this section caused by misstatements of such employees.

Any contribution under this section shall be allowable as a business expense.

(j) Any employer notified of a determination of the commissioner that it is subject to the provisions of subsection (a) or subsection (b), or notified of a determination of the commissioner that an individual is an employee for the purposes of subsection (b) and subsection (c), may request a hearing on such determination. The request for hearing shall be filed within ten days after mailing of the notice of the determination. If a

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History—  
Amended  
1992, 26, §  
1993, 263.

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to the commissioner in accordance with commissioner. The receipts from such deposited in the state Unemployment impressed with a trust and dedicated, tee, to the Medical Security Trust Fund and eighteen F. Prior to the depositing r may deduct all administrative costs including an amount as determined by r in accordance with federal cost rules, deduction exceed five per cent of the section.

(g).]

board composed of the secretary for signee, the secretary of human services if economic affairs or his designee. Said of health insurance inflation for the e medical security wage base for the l certify said rate to the commissioner f the year preceding the year to which e be applied. This inflation rate shall be n premiums for accident and sickness ommonwealth during the then current cident and sickness insurance policies g the then previous calendar year.

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any report or form as required by this o ten percent of the contribution due er, that the penalty assessed shall not e less than twenty-five dollars for each stitution for any amounts owed to the esult of such failure to make a correct

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rules and regulations promulgated by od faith on statements by employees tus shall not be liable for any penalty y with the provisions of this section ployees.

ion shall be allowable as a business

ermination of the commissioner that it ction (a) or subsection (b), or notified ner that an individual is an employee and subsection (c), may request a ie request for hearing shall be filed ie notice of the determination. If a

tations, see Midyear Pamphlet.

hearing is requested, the commissioner shall give the employer a reasonable opportunity for a fair hearing before an impartial hearing officer designated by the commissioner. The conduct of such hearing shall be in accordance with the procedures prescribed by subsection (b) of section thirty-nine. Any employer aggrieved by the decision following such hearing may appeal such decision. Such appeal shall be in accordance with the procedures prescribed by sections forty to forty-two, inclusive. Unless action is taken under section forty, the decision of the commissioner shall be final on all questions of fact and law.

(k) The department shall provide written information to every individual who is eligible for unemployment benefits, including extended benefits under section thirty A or extended unemployment compensation benefits under the federal Emergency Unemployment Compensation Act of 1991 or any other federal act, that such individual may be eligible for health insurance coverage pursuant to this section and the provisions of section nine of chapter one hundred and eighteen F. In addition, the department shall post in their local offices a clear and conspicuous notice advising such individuals of their rights under this section, which notice shall be in English, Spanish, and any other language which the department determines appropriate for the area office in which the notice is posted. The department of medical security shall provide the department with such information and notice.

#### History—

Amended by 1990, 177, §§ 263, 264, approved, with emergency preamble, Aug 7, 1990; 1992, 26, § 15, approved, with emergency preamble, April 27, 1992 (see 1992 note below); 1993, 263, §§ 10, 11, approved, with emergency preamble, Nov 24, 1993.

#### Editorial Note—

Section 79 of the inserting act (1988, 23) provides as follows:

SECTION 79. Except as otherwise provided, the provisions of subsection (a) of section fourteen G of chapter one hundred and fifty-one A of the General Laws shall apply to wages paid on or after January first, nineteen hundred and ninety. The provisions of subsections (b) and (c) of said section fourteen G shall apply to wages paid on or after August first, nineteen hundred and ninety-six. (Amended by 1991, 138, § 222, approved July 10, 1991, by § 393, effective July 1, 1991; 1994, 274, § 3, approved, with emergency preamble, Dec 30, 1994; 1995, 239, § 4, approved, with emergency preamble, Nov 22, 1995.)

The 1990 amendment, by § 263, substituted "commissioner" for "director", wherever appearing in this section (with the exception of its appearance in the fourth sentence of subsection (b)), and by § 264, in the second sentence of subsection (d), substituted "Unemployment Compensation Fund" for "unemployment compensation fund", and in the second sentence of subsection (d) and in subsection (i), substituted "Medical Security Trust Fund" for "medical security trust fund".

The 1992 amendment added subsection (k).

The 1993 amendment, by § 10, in subsection (i), substituted the first paragraph for one which read: "Any employer who fails to comply with the provisions of this section shall pay a penalty of not less than thirty-five dollars or five dollars for each employee, whichever is greater, for every day during which the failure continues, in addition to restitution for any amounts owed to the Medical Security Trust Fund as a result of such failure to make a correct contribution."; and by § 11, in subsection (k), substituted the last sentence for one which read: "In devising such information and notice the department shall seek assistance from the department of medical security."

#### Total Client-Service Library\* References—

16 Mass Jur. Employment and Labor Relations §§ 17:67, 69, 70, 71, 104, 114, 125.

For latest statutes and case citations, call 1-800-527-0430.

**OFFICIAL**

GL C  
151A  
§ 1

(g) "Department", the division of employment and training within the department of labor and workforce development.

GL C  
151A  
§ 14G

SECTION 451. Section 14G of chapter 151A of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by striking out line 67, the words "chapter one hundred and eighteen F" and inserting in place thereof the words:- subsection (1).

GL C  
151A  
§ 14G

SECTION 452. The second paragraph of subsection (h) of said section 14G of said chapter 151A, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- "On or before November thirtieth of each year, the department shall certify to the board the estimated costs for the subsequent year of health insurance coverage provided for individuals and their families who (1) are eligible for the health insurance program established by subsection (1) for individuals receiving unemployment compensation and or (2) are eligible for the health insurance program established by section nineteen of chapter one hundred and eighteen F."

GL C  
151A  
§ 14G

SECTION 453. Subsection (i) of said section 14G of said chapter 151A, as so appearing, is hereby amended by striking out the second paragraph.

GL C  
151A  
§ 14G

SECTION 454. Subsection (k) of said section 14G of said chapter 151A, as so appearing, is hereby amended by striking out, in lines 187 and 188, the words "and the provisions of section nine of chapter one hundred and eighteen F,- by striking out, the last sentence.

GL C  
151A  
§ 14G

SECTION 455. Said section 14G of said chapter 151A, as so appearing, is hereby further amended by adding the following two subsections:- (1) The department shall establish and may operate a health insurance program for the benefit of persons who meet both of the following criteria: (1) the person is receiving or is eligible to receive unemployment compensation benefits under this chapter, including extended benefits under the provisions of section thirty A or extended unemployment compensation benefits, hereinafter referred to as EUC benefits, under the federal Emergency Unemployment Compensation Act of 1991 or any other federal act; and (2) the gross income of the person and the person's spouse, if any, including any income received from unemployment benefits, extended benefits or EUC benefits as provided in clause (1), is less than or equal to four times the non-farm poverty guidelines of the United States Office Of Management and Budget. The health insurance program administered by the department shall consist of the following options: a buy-in option called the continuation plan under which the department shall subsidize a

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qualified person's continued enrollment in the health insurance plan to which they belonged at the time of, or prior to, applying for unemployment compensation benefits, including persons whose continued eligibility for said enrollment is based on the federal COBRA law, so-called; as well as an option called the direct coverage plan which shall consist of a limited plan of health care services and benefits to be administered by the department. To qualify for benefits under this section, the department shall require that applicants maintain continued enrollment in the health insurance plan in which they were enrolled prior to applying for unemployment compensation benefits, or as permitted by the federal COBRA law. Persons so qualified shall be ineligible for enrollment in the direct coverage plan and the department shall subsidize enrollees' continued health insurance plan by reimbursing said enrollees for a portion of their premium cost in accordance with the department's benefits schedule. Persons unable to qualify for COBRA benefits, so-called, due to lack of access to prior health insurance coverage through their former employer or their spouse's employer or a hardship determined by the department, shall be eligible for the direct coverage plan pursuant to the eligibility requirements of this section. The department shall establish a schedule of co-payments and deductibles within the direct coverage plan which shall promote the cost-effective use of services by participants in the program. The department shall establish procedures for the calculation of the gross income of an applicant or the applicant's spouse, if any, for the purposes of determining eligibility under a health insurance plan established under this section. Such procedures shall provide that in determining the income of the applicant or the applicant's spouse, if any, the department shall examine the gross income of the applicant and the applicant's spouse, if any, in the six months prior to application, and a projection of the gross income of the applicant and the applicant's spouse, if any, including a calculation of the maximum benefits payable to the applicant and the applicant's spouse, if any, from unemployment benefits, extended benefits or EOC benefits, for the six months after application. Such procedures shall also make provisions for the redetermination of eligibility for an enrollee or the enrollee's family. The department shall establish grievance procedures under which any decision, action or inaction of the department which directly affects an enrollee or the enrollee's family, and is related to the receipt of benefits under this section can be revived. The department shall establish appeal procedures under

GL c  
151A  
§ 14G

which an applicant may appeal a denial of benefits in whole or in part; or under which an enrollee may appeal a determination of income, or under which an enrollee may appeal a termination from the program. For the purposes of this section the words "family members" of the applicant or enrollee shall include the applicant or enrollee, a spouse, and any legal dependents. The department shall prepare reports on the status of the program established in this section, and submit such reports annually on the first Wednesday in January, April, July, and October to the joint committee on health care and the house and senate committees on ways and means. Such report shall include, but not be limited to, the number of enrollees in the program for the previous quarter, the amount of benefits paid out in the previous quarter, and the end of quarter balance in the Medical Security Trust Fund established in subsection (m). The commissioner is hereby authorized to delegate, by means of an interagency service agreement, to any other state agency the authority to manage and administer the health insurance program established by this subsection. (m) There is hereby established a medical security contribution trust fund, which shall be administered and expended by the department without further appropriation. Said trust fund shall consist of employer unemployment health insurance contributions required by subsection (a) and premiums paid by enrollees. Said fund shall be used exclusively for the payments of premiums for health insurance plans provided to persons receiving unemployment compensation. The commissioner shall from time to time requisition from said trust fund such amounts as he deems necessary to meet the current obligations of the department and estimated obligations for a reasonable future period.

GL c  
151A  
§ 29E

SECTION 456. Chapter 151A of the General Laws is hereby further amended by inserting after section 29D the following new section:-

Section 29E. (a) The deputy director shall notify in writing each individual who files a new initial claim for benefits under this chapter, at the time of filing such claim, that: (1) any payments of unemployment compensation as defined in section 85(b) of the Internal Revenue Code received under this chapter are subject to federal and state income tax; (2) receipt of such payments may require the individual to make quarterly estimated payments of federal and state income tax; and (3) the individual may elect, in accordance with the procedures prescribed by the commissioner, to have federal and state income tax deducted and withheld from such payments of unemployment compensation.

(b) If a subsection (a) individual's income has an amount equal under the subsection which is included in a statement of unemployment

(c) If a subsection (a) individual's income has an amount payable to the state of section 1 under subsection (a) full dollar withheld from

(d) Any the Unemployment taxing authority

(e) The provision in accordance

(f) The workforce definition only employment

required to deductible up greater than amount deducted shall pro paragraph, under this

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Attachment 4.19A(1)

**State Plan Under Title XIX of the Social Security Act  
State: Massachusetts  
Institutional Reimbursement**

**TN 96-015  
STATE PLAN AMENDMENT  
INPATIENT ACUTE HOSPITAL**

**EXHIBIT 10: 105 CMR 160.00  
114.3 CMR 46.00**

OFFICIAL

105 CMR: DEPARTMENT OF PUBLIC HEALTH

105 CMR 160.000: ACUTE CARE INPATIENT SUBSTANCE ABUSE DETOXIFICATION  
TREATMENT SERVICES

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- 160.002: Authority
- 160.003: Citation
- 160.004: Scope
- 160.020: Definitions
- 160.097: Compliance with Requirements
- 160.098: Waiver
- 160.099: Severability

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- 160.100: Requirement of Licensure and Approval
- 160.101: Application for a License or Certificate of Approval
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- 160.212: Storage Areas

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Section: continued

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**160.001: Purpose**

105 CMR 160.000 sets forth standards for the maintenance and operation of acute care inpatient substance abuse detoxification treatment services.

**160.002: Authority**

105 CMR 160.000 is adopted under the authority of M.G.L. c. 111B, § 6 and c. 111E, § 7.

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**OFFICIAL**

160.003: Citation

105 CMR 160.000 shall be known and may be cited as 105 CMR 160.000: *Acute Care Inpatient Substance Abuse Detoxification Treatment Services*.

160.004: Scope

105 CMR 160.000 replaces and shall be substituted for 105 CMR 160.000 and shall be substituted for 105 CMR 750.700(B) for all residential detoxification programs and shall apply to all entities which provide acute care inpatient substance abuse detoxification treatment services.

All references to residential detoxification programs in 105 CMR 750.000, including sections; 750.010, 750.020, 750.500(D)(2), 750.540(E) and 750.800(C)(1) are hereby deleted. Such entities are subject to licensure or approval under M.G.L. c. 111B, § 6 and c.111E, § 7.

160.020: Definitions

The following definitions shall apply for the purpose of 105 CMR 160.000 unless the context or subject matter clearly requires a different interpretation.

Acute Care Inpatient Substance Abuse Detoxification Treatment Service an inpatient unit that provides short term medical treatment for alcohol and other drug withdrawal, individual medical assessment, evaluation, intervention, substance abuse counseling and post detoxification referrals. The units may be freestanding or hospital based programs.

Administrator The individual duly appointed by the governing body of the agency who is responsible for the day to day operations of the agency operating the service.

Affiliation Agreement shall mean a signed and dated document describing the agreed upon terms of a service relationship between the named parties.

Agency shall mean a legal entity to which a license or approval is granted by the Department for the delivery of the service.

Approval shall mean a certification, in writing, whether full or provisional, issued by the Department to a private or public entity or institution thereof which authorizes it to operate the service.

Building shall mean the physical structure in which the service is provided.

Clinical Supervisor shall mean an individual with a minimum of a doctorate or masters degree in one of the following disciplines or a closely related field: clinical psychology education-counseling, medicine, psychology, nursing, rehabilitative counseling, social work; or a licensed certified social worker; a minimum of one year of clinical supervisory experience and three years of counseling experience.

Clinician I shall mean an individual with a minimum of a masters degree in any of the disciplines mentioned under Clinical Supervisor and who has a minimum of four years of counseling experience, one year of which shall have been related to substance abuse. If providing supervision, one year of supervisory experience is also required.

Clinician II shall mean an individual with a minimum of a masters degree in any of the disciplines mentioned under Clinical Supervisor and who has a minimum of two years of counseling experience, or has a bachelors degree in any of the disciplines mentioned above and a minimum of three years of substance abuse counseling experience, or is a Registered Nurse with a minimum of three years medical and/or counseling experience related to substance abuse treatment, or has alcohol or drug counselor certification and a minimum of five years of substance abuse counseling experience.

Clinician III shall mean an individual with a minimum of a high school degree or equivalent and a minimum of one year supervised counseling experience in substance abuse treatment or a closely related field.

160.020: continued

Commissioner shall mean the Commissioner of Public Health.

Consultation shall mean the presentation of specific patient cases to clinicians of equal or greater expertise for the purpose of feedback, direction and guidance.

Department shall mean the Department of Public Health.

License shall mean certification, in writing, whether full or provisional, issued by the Department to any responsible and suitable agency which authorizes that agency to operate a medical detoxification treatment service.

Licensed Practical Nurse shall mean an individual licensed by Massachusetts Board of Registration in Nursing in accordance with M.G.L. c. 112, § 74A, and knowledgeable in the field of alcoholism and drug addiction.

Licensee shall mean any agency holding a license or approval from the Department to operate the service.

Medical Director shall mean a physician who assumes responsibility for the administration of all medical services performed by the service.

Nurse Practitioner shall mean an individual licensed in accordance with M.G.L. c. 112, § 80B and knowledgeable in the field of alcoholism and drug addiction.

Nurse Supervisor shall mean a registered nurse with a minimum of three years nursing experience, of which one year shall have been related to substance abuse treatment.

Patient shall mean a person applying for admission or admitted to the service.

Physician shall mean an individual licensed by the Massachusetts Board of Registration in Medicine in accordance with M.G.L. c. 112, § 2, and knowledgeable in the field of alcoholism and drug addiction.

Physician Assistant shall mean an individual licensed in accordance with M.G.L. c. 112, § 9G and knowledgeable in the field of alcoholism and drug addiction.

Psychiatrist shall mean a physician licensed by the Massachusetts Board of Registration in Medicine; certified by the American Board of Psychiatry and Neurology or an equivalent body, or eligible for such certification, and knowledgeable in the field of alcoholism and drug addiction.

Psychologist shall mean an individual licensed by the Massachusetts Board of Registration of Psychologists in accordance with M.G.L. c. 112, §§ 118 through 129; and knowledgeable in the field of alcoholism and drug addiction.

Qualified Health Care Professional shall mean a Registered Nurse, Licensed Practical Nurse trained to do physical assessments, Nurse Practitioner or Physician's Assistant duly licensed, certified or registered as such in the Commonwealth of Massachusetts.

Registered Nurse shall mean an individual licensed by the Massachusetts Board of Registration in Nursing in accordance with M.G.L. c. 112, § 74, and knowledgeable in the field of alcoholism and drug addiction.

The Service shall mean an acute care inpatient substance abuse detoxification service.

Social Worker shall mean an individual licensed by the Massachusetts Board of Registration of Social Workers in accordance with M.G.L. c. 112, §§ 130 through 138, and knowledgeable in the field of alcoholism and drug addiction.

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**OFFICIAL**

160.020: continued

Staff shall mean an individual designated by the agency to provide the service on a direct or indirect basis.

Supervision shall mean a regular and specified time set aside to provide training, education and guidance to clinical staff in the management of their clinical cases. Supervision may be provided one-to-one or in small groups of no more than eight individuals.

160.097: Compliance with Requirements

Unless otherwise provided all acute care inpatient substance abuse detoxification treatment services licensed or approved pursuant to 105 CMR 160.000 shall meet the requirements set forth in 105 CMR 160.000.

160.098: Waiver

(A) The Commissioner or his/her designee may waive the applicability of one or more of the requirements imposed on the service by 105 CMR 160.000 upon finding that:

- (1) Compliance would cause undue hardship to the agency;
- (2) The agency is in substantial compliance with the spirit of the requirement; and
- (3) The agency's non-compliance does not jeopardize the health or safety of its patients and does not limit the agency's capacity to provide the service.

(B) The agency shall provide the Commissioner or his/her designee written documentation supporting its request for a waiver.

160.099: Severability

Any section, subsection, paragraph or provision of 105 CMR 160.000 declared illegal or unconstitutional by a court of competent jurisdiction is severable from 105 CMR 160.000

160.100: Requirement of Licensure and Approval

(A) Agencies Requiring Licensure or Approval.

- (1) All agencies shall file an application for licensure or approval with the Department for the establishment or provision of the service.
- (2) Where the service is established and provided by a application for approval for the establishment or provision of the service shall be filed.

(B) Agencies Not Requiring Licensure or Approval. A service established and provided by a department, agency or institution of the federal government does not require licensure or approval under 105 CMR 160.000.

160.101: Application for a License or Certificate of Approval

(A) Applicants for a license or certificate of approval shall submit to the Department an application on an approved form obtained from the Department together with such other documents and materials as the Department shall deem appropriate.

(B) No application shall be accepted unless it is on Department forms, completed in full, and sworn and attested to before a notary.

(C) Any and all fees for the license shall accompany each application and shall be in the amount set by the Department or the Executive Office of Administration and Finance. No fee shall be required of a department, agency or institution or political subdivision of the Commonwealth applying for a certificate of approval.

160.102: Evaluation of Application

The Department shall not approve an application for an initial or renewal license or approval unless:

160.102: continued

(A) The Department has conducted an inspection or other investigation and determined that the applicant complies with 105 CMR 160.000 *et seq.*

(B) The Department has conducted an investigation of the applicant which includes but is not limited to:

- (1) Consideration of past performance as a service provider;
- (2) Financial viability;
- (3) Absence of criminal activity;
- (4) Record of compliance with these or any previous applicable regulations under any past license certificate of approval or contract;
- (5) Possession of all current certificates of inspection issued by the appropriate authorities; and
- (6) Has determined as a result of such investigation that the applicant is suitable to establish or maintain the service.

(C) The Department has determined that there is need for the service at the designated location.

**160.103: Change of Name, Ownership or Location**

(A) The Department shall be notified immediately, and in writing, of any proposed change in location, name or ownership of the agency.

(B) Transfer of ownership shall be deemed to have occurred when any of the following transfers occurs:

- (1) A transfer of a majority interest in the ownership of an agency;
- (2) In the case of a for profit corporation, transfer of a majority of any class of stock;
- (3) In the case of a non-profit corporation, changes in the corporate membership and/or trustees as the Department determines to constitute a shift in control of the agency;
- (4) In the case of a partnership, transfer of a majority of the partnership interest;
- (5) In the case of a trust, change of the trustee or a majority of trustees;
- (6) A transfer of ownership shall also be deemed to have occurred when foreclosure proceedings have been instituted by a mortgagee in possession.

(C) Within ten days of a change in ownership, the new owner(s) of the agency shall file an application for licensure. This application shall have the effect of a provisional license until such time as the Department acts upon the application.

(D) A license or approval shall not be transferable.

**160.104: Collection and Updating of Information**

(A) Each agency shall file with the Department such data, statistics, schedules or information as the Department may require for the purposes of licensing and/or monitoring and evaluating a service.

(B) All information submitted under the requirements of 105 CMR 160.000 or otherwise required by the Department shall be kept current by each licensee. Any document which amends, supplements, updates or otherwise alters a required document must be filed with the Department within 30 days of the change.

(C) Any agency who fails to furnish such data, statistics, schedules or information as the Department may require, or who files fraudulent returns thereof, shall be punished by a fine of not more than \$100.00.

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160.110: Inspection

(A) Each applicant or licensee shall be subject to visitation and inspection by the Department:

- (1) Prior to the granting or renewing of a license or certificate of approval; and
- (2) for the purpose of monitoring and evaluation.

(B) If an applicant or current licensee refuses to allow entry and inspection by Department inspectors, the Department may seek an administrative search warrant to authorize entry.

(C) Refusal by an agency to allow entry to Department inspectors shall constitute adequate and independent grounds for license or approval denial, suspension, revocation and/or refusal to renew.

160.111: Deficiency Statements

(A) After every inspection in which any violation of 105 CMR 160.000 is observed, the Department shall prepare a deficiency statement citing every violation observed, a copy of which shall be sent to the clinic.

(B) Every correction order shall be in writing and include a statement of the deficiencies found, the period within which the deficiency must be corrected and the provision(s) of law and regulation relied upon to cite the deficiency(ies). The period shall be reasonable, and, except when the Department finds an emergency dangerous to the health and safety of patients, not less than 30 days from receipt of the correction order.

160.112: Plan of Correction

(A) The licensee shall submit to the Department a written plan of correction for violations cited in a deficiency statement prepared pursuant to 105 CMR 160.000 within ten business days after the deficiency statement is sent.

(B) Every plan of correction shall set forth, with respect to each deficiency, the specific corrective step(s) to be taken, a timetable for such steps, and the date by which compliance with 105 CMR 160.000 will be achieved. The timetable and the compliance dates shall be consistent with achievement of compliance in the most expeditious manner possible.

(C) The Department shall review the plan of correction for compliance with the requirements of 105 CMR 160.113(B) and will notify the licensees of either the acceptance or rejection of the plan. An unacceptable plan must be amended and resubmitted within five business days of the date of notice.

160.120: Renewal of License or Certificate of Approval

(A) The Department shall send each licensee or holder of a certificate of approval notification of the need to renew its license or approval and the necessary application forms no later than 90 days prior to the expiration of an existing license or approval.

(B) The licensee or holder shall complete and return the application form within 30 days of its receipt of notification from the Department, together with other information and materials that the Department may deem appropriate.

(C) License and certificate renewals shall follow the procedures in 105 CMR 160.101 and 160.102 governing the issuance of initial licenses and approvals.

(D) When a licensee submits a timely application for a renewal license or certificate, its previous license or certificate shall be valid until the Department acts on its renewal application.

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160.121: Period of License

The term of the license or certificate of approval shall be for two years from the date of issue, and any renewals thereof shall be for two years, unless otherwise provided.

160.122: Provisional Licenses

(A) All new applicants who have not been previously licensed or approved to provide the service as defined in 105 CMR 000 shall be issued a provisional license or certificate of approval.

(B) When the Department finds that an applicant for licensure or approval has not complied or is unable to comply with all applicable regulations, but has the capability of conforming to all regulations, the Department may issue a provisional license or approval provided that the care given by the agency is adequate to protect the health and safety of the patients.

(C) A provisional license or approval is valid for a period not to exceed six months and may be renewed once for no more than six months. The Department shall issue a provisional license only when an applicant submits a written plan for full compliance. This written plan shall include specific target dates for accomplishing full compliance.

Each licensee shall post in a conspicuous place the current license or certificate of approval issued by the Department.

160.130: Legal Proceedings

Every licensee shall report in writing to the Department any legal proceeding brought against the agency or any person employed by the agency which arises out of circumstances related to the delivery of the service or which may impact on the continued operation of the agency within ten days of initiation of such proceeding.

160.131: Death

The licensee shall orally notify the Department and the patient's known next-of-kin as soon as possible and shall notify such parties in writing within 72 hours of any patient death occurring on site.

160.132: Accident and Fire

(A) The licensee shall notify the Department as soon as possible and in writing within 72 hours of any serious accident requiring medical attention involving patients or staff occurring on the premises and related to the operation of the service.

(B) The licensee shall notify the Department as soon as possible and in writing within 72 hours of any fire or accident resulting in damage to the building.

160.133: Closure

(A) When an agency ceases to operate a service through license or approval denial, denial of a renewal, suspension, revocation, or when the agency voluntarily closes, the licensee shall be responsible for:

- (1) In the case of voluntary closure, notifying the Department at least 21 days prior to closure. For the purposes of 105 CMR 160.000 voluntary closure shall include foreclosure or bankruptcy proceedings; and
- (2) Orally notifying each patient at least 21 days prior to the termination of service, that the service will cease.
- (3) Developing in collaboration with each patient, a written referral plan which will include a plan for continuing the service if appropriate.
- (4) Assuring that clinical records shall accompany patients upon transfer. Transfer of records will be made in accordance with federal and state confidentiality law and regulations. A signed release from each patient shall be obtained prior to the transfer of such records.

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